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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,911	09/18/2001	Arun B. Kulkarni	J&J-2049	8616

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EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/954,911

Applicant(s)

KULKARNI ET AL.

Examiner

Marina Lamm

Art Unit

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-- The MAILING DATE of this communicati n appears n the cover sheet with the c rrespondence address --

## Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Claims 1-15 are pending in this application filed 9/18/01.

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1, 2, 5, 6, 9 and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lyle et al. (US 6,440,923).

Lyle et al. teach propellant-driven “bag-in-can” aqueous gel compositions containing 0.1-20% of hydrophobic benefit agents such as essential oils (e.g. menthol and camphor), structurants or thickeners such as swelling clays, viscosity modifying agents such as salts (e.g. sodium chloride and ammonium sulphate), 0.1-10% of humectants such as glycerol or sorbitol. See col. 1, lines 1-11; col. 2, lines 37-50; col. 4, lines 52-58; col. 5, lines 7-10; col. 7, line 54; col. 8, lines 3-29. The compositions of Lyle et al. may contain citric acid. See Examples 1-3.

Thus, Lyle et al. teach each and every limitation of Claims 1, 2, 5, 6, 9 and 12-15.

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 7, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyle et al.

Lyle et al. applied as above.

With respect to Claims 3 and 4, the reference does not explicitly teach the claimed clay ranges. However, Lyle et al. teach the concentration of another structurant/thickener such as PEG-10 methyl glucose dioleate, which is within the claimed range. See Examples.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to determine the clay ranges by routine experimentation using the disclosed ranges of other structurants/thickeners as guidance, in order to achieve the desired viscosity of the composition.

With respect to Claims 7 and 8, the reference does not explicitly teach the claimed ranges of water-miscible solvents. With respect to Claims 10 and 11, the reference does not explicitly teach the claimed ranges of viscosity stabilizer. However, absent some teaching to the contrary, the determination of particular ranges employed is within the skill of the ordinary worker as a part of the process of normal optimization.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to determine the ranges of water-miscible solvents and/or viscosity stabilizers ranges by routine experimentation in order to achieve the desired viscosity of the composition.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,407,044 disclose shower gel which can be packaged in aerosol packaging; US 6,415,800 discloses sprayable shaving preparation.

6. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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1/10/03

  
JOSEPH A. ZEES  
SUPERVISORY PATENT EXAMINER

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